



DEPARTMENT OF THE NAVY

BOARD FOR CORRECTION OF NAVAL RECORDS

2 NAVY ANNEX

WASHINGTON DC 20370-5100

ELP

Docket No. 7874-99

22 March 2000

[REDACTED]

Dear [REDACTED]

This is in reference to your application for correction of your naval record pursuant to the provisions of Title 10, United States Code, Section 1552.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 22 March 2000. Your allegations of error and injustice were reviewed in accordance with administrative regulations and procedures applicable to the proceedings of this Board. Documentary material considered by the Board consisted of your application, together with all material submitted in support thereof, your naval record and applicable statutes, regulations and policies.

After careful and conscientious consideration of the entire record, the Board found that the evidence submitted was insufficient to establish the existence of probable material error or injustice.

The Board found that you enlisted in the Marine Corps on 29 April 1960 for four years at age 17. The record reflects that you were advanced to PFC (E-2) and served without incident until 24 January 1961 when you were convicted by summary court-martial of disobedience of an order. You were sentenced to confinement at hard labor for 20 days, a forfeiture of \$40, and reduction in rank to PVT (E-1).

You served without further incident until 27 May 1961 when you were apprehended by civil authorities on suspicion of burglary. You remained in the hands of civil authorities until 18 January 1961 when you were convicted of petty larceny. Your sentence to confinement in the county jail was commuted to time served.

On 5 November 1962 you were convicted by Hong Kong civil authorities of assaulting a prostitute. You were fined 250 Hong Kong dollars and assessed another 100 Hong Kong dollars as compensation to the injured party. The maximum sentence you

could have received by the civil court was a fine of 2,000 Hong Kong dollars and three years of confinement. On 8 November 1962 you received nonjudicial punishment (NJP) for being drunk in a public place and were awarded seven days of confinement on board ship.

You were arrested again by civil authorities in May 1963 and were convicted of forcible trespassing on 18 June 1963. You were sentenced to 30 days in the county jail and were returned to military jurisdiction on 11 July 1963.

On 30 August 1963 you were notified that you were being considered for an undesirable discharge by reason of misconduct due to civil conviction. You were advised of your procedural rights and waived the right to counsel, but elected to have your case reviewed by a board of officers. Thereafter, the commanding officer recommended discharge by reason of misconduct due to civil conviction. On 20 September 1963 you received your second NJP for a one day period of unauthorized absence and bringing discredit upon the military service by being drunk.

You appeared before a board of officers on 6 November 1963, which recommended an undesirable discharge by reason of misconduct. The discharge authority approved the proceedings and directed an undesirable discharge by reason of misconduct due to civil conviction. You were so discharged on 22 November 1963.

The Naval Discharge Review Board (NDRB) denied your request for an upgrade of your discharge on 17 September 1982.

Applicable regulations provided that a Marine convicted by civil authorities for an offense which involved moral turpitude, or for which the maximum permissible punishment under the Uniform Code of Military Justice is confinement in excess of one year, could be administratively discharged, as undesirable, by reason of misconduct.

In its review of your application the Board carefully weighed all potentially mitigating factors such as your youth and immaturity and the fact that it has been more than 36 years since you were discharged. The Board noted the issues you presented to the NDRB in September 1982 and the contention to the effect that your troubles with civilian authorities was due to the racial problems of the 1960s. The Board concluded that the foregoing factors and contentions were insufficient to warrant recharacterization of your discharge given your record of two NJPs; conviction by summary court-martial and three civil convictions, two of which were for offenses involving moral turpitude. Your contention implying your civil convictions were due to racial prejudice is neither supported by the evidence of record nor by any evidence

submitted in support of your application. The Board concluded that you were guilty of too much misconduct to warrant recharacterization to honorable or under honorable conditions. The Board thus concluded that the discharge was proper and no changes are warranted. Accordingly, your application has been denied. The names and votes of the members of the panel will be furnished upon request.

It is regretted that the circumstances of your case are such that favorable action cannot be taken. You are entitled to have the Board reconsider its decision upon submission of new and material evidence or other matter not previously considered by the Board. In this regard, it is important to keep in mind that a presumption of regularity attaches to all official records. Consequently, when applying for a correction of an official naval record, the burden is on the applicant to demonstrate the existence of probable material error or injustice.

Sincerely,

W. DEAN PFEIFFER
Executive Director